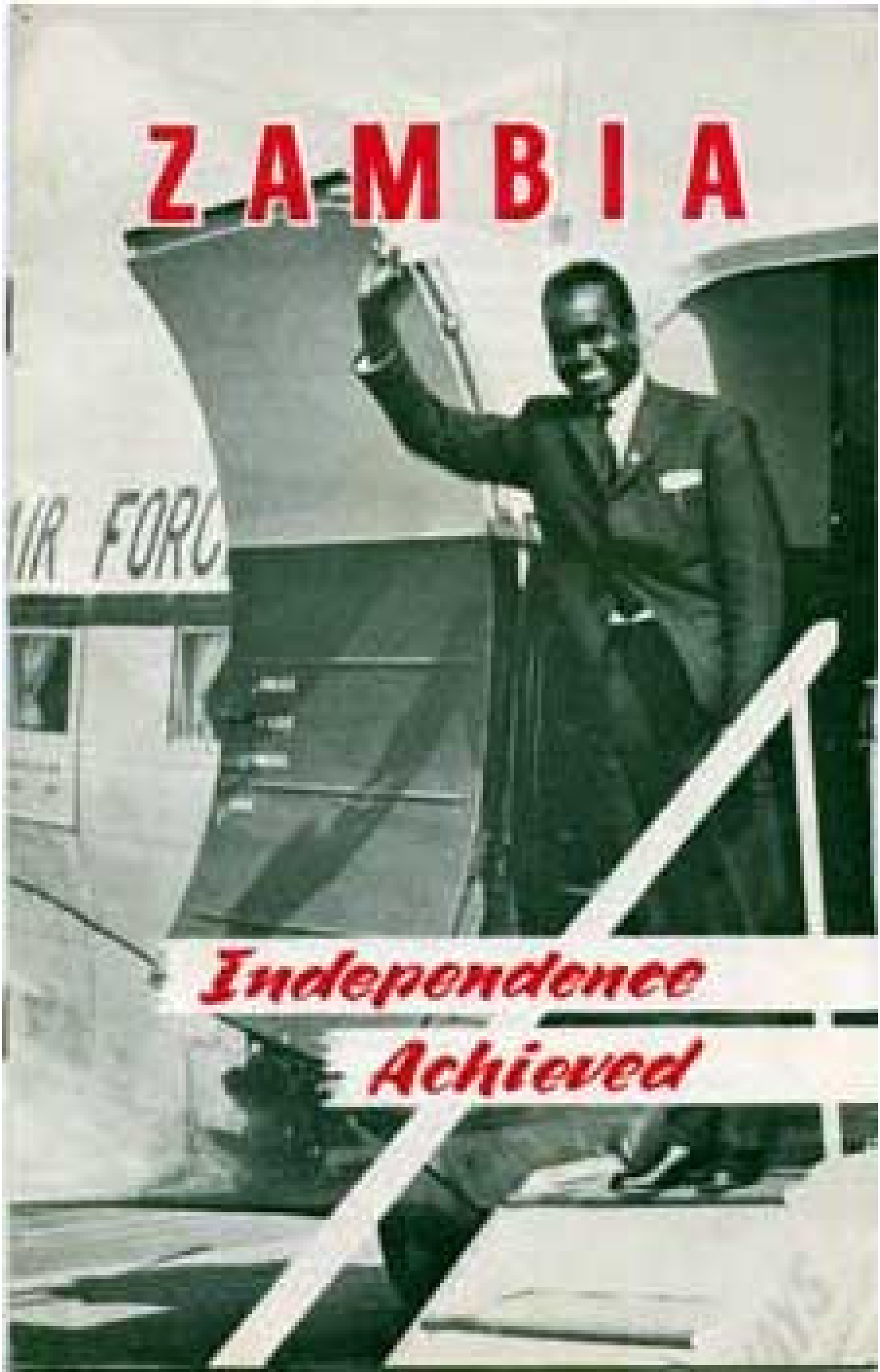
ZAMBIA



Independence Achieved

Cover picture. **A triumphant Dr. Kaunda returns to Lusaka after the successful Independence Conference in London**

Independence Achieved

ON October 24, 1964, Northern Rhodesia will become the independent Republic of Zambia. The decision to grant the Territory independence and, at the same time, Republic status, was made at the Northern Rhodesia Independence Conference held at Marlborough House in London from May 5 to 19, 1964.

The Northern Rhodesia Government delegation to the conference comprised the Prime Minister, Dr. K. D. Kaunda; the Minister of Home Affairs, Mr. S. M. Kapwepwe; the Minister of Finance, Mr. A. N. L. Wina; the Minister of Justice, Mr. M. M. Chona; the Minister of Agriculture, Mr. E. H. K. Mudenda; two Parliamentary Secretaries, Mr. A. M. Milner and Mr. J. K. Chivunga; and a Member of Parliament, Mr. H. M. Kikombe.

Also attending the talks with the British Government was the Governor of Northern Rhodesia, Sir Evelyn Hone, and representatives of the African National Congress and the National Progress Party.

The conference decided on a number of provisions to be included in the Independence Constitution, which will be on the lines of the present Constitution with adaptations appropriate to the establishment of an independent republic.

The following are the detailed provisions:

The Republic. Northern Rhodesia will be known as Zambia and be a Sovereign Republic.

Human Rights. The provisions on Human Rights will be the same as those in Chapter I of the present Constitution. The Constitutional Council established by the present Constitution will not be reproduced in the Independence Constitution but a section will be included providing that if not less than seven members of the National Assembly give written notice to the Speaker within three days of the final reading of any Bill a Tribunal will be appointed of two serving or retired Judges of the High Court who would consider whether the Bill, if enacted, would be inconsistent with the code of Human Rights and report to the President and the Speaker.

If the Tribunal reported that the Bill appeared to be inconsistent, the President would be able to assent or refuse his assent to the Bill or to return it to the Assembly. A similar procedure would apply to a statutory instrument and the President would be able to make an Order affirming or annulling it.

The President. There will be a President who will be Head of State and Commander-in-Chief of the Armed Forces. He will be a Citizen of Zambia, qualified as a voter for Parliamentary elections and at least thirty years old. He will be elected at the same time as the general election of Members of the National Assembly after any dissolution of Parliament.

Each presidential candidate must be nominated by at least 1,000 registered voters. Every candidate for election to the National Assembly would declare in advance which presidential candidate he supported and the constituency ballot papers would also name the presidential candidate each parliamentary candidate supported. Each voter could then vote simultaneously for his parliamentary and presidential candidates. The elected President would be the candidate with the greatest number of votes.

Special provision should be made before Independence for the election by a secret ballot of Members of the Legislative Assembly of the person who would become the first President of Zambia.

The office of President will become vacant on the death or resignation of the President. There will be an election of President after any dissolution of Parliament. The President will remain in office until the next presidential election result has been declared and his salary will be fixed by the National Assembly.

The Vice-President, Ministers and Parliamentary Secretaries. There will be a Vice-President as Principal Assistant of the President and Leader of the House in Parliament. There will be a maximum of fourteen Ministers and the President will assign portfolios to them and to the Vice-President. The President will appoint and have power to dismiss the Vice-President, Ministers and Parliamentary Secretaries.

The Cabinet will comprise the President as chairman, the Vice-President and Ministers. Subject to the President's powers as Head of State, the Cabinet will be responsible for policy. The Secretary to the Cabinet will be a civil servant appointed by the President.

The Attorney-General. The Attorney-General will be Legal Adviser to the Government and will be appointed by the President with power to remove him from office. He will vacate his office when the President vacates office.

The Director of Public Prosecutions. The Director of Public Prosecutions will be a public officer with power to institute and discontinue criminal proceedings on his own responsibility, provided he brings to the notice of the Attorney-General any case that appears to the Director to involve questions of public policy.

The Prime Minister, Dr. Kaunda, followed by his Minister of Home Affairs, Mr. Kapwepwe, and other members of the Northern Rhodesia Government delegation, at Marlborough House

The President will have powers on the *Prerogative of Mercy* similar to those in Section 83 (1) of the present Constitution. He will consult an advisory committee in all capital cases and such other cases as he thinks fit.

Parliament. This will consist of the President and a National Assembly of seventy-five Elected Members. The President will have power to nominate up to five persons as Special Members to enhance Parliament's representative character or to obtain the services of persons whose special qualifications would be of particular value. The President, although not a member of the Assembly, will have power to address it at any time.

Under transitional provisions the present reserved seats will continue until the first dissolution of the National Assembly after Independence. If that dissolution takes place before the expiration of the full term of the existing Parliament, the President will be able to decide whether the reserved seats should continue up to the date on which the full parliamentary term would have expired.

The National Assembly (Election and Membership). All candidates for election to the National Assembly shall be citizens of Zambia and aged not less than twenty-one, subject to certain disqualifications similar to those in Section 37 of the present Constitution. Members of the Assembly shall vacate their seats if they cease to be citizens of Zambia, are elected President, become disqualified for election, or if an appointment as a nominated Member is revoked by the President. A Member may appeal against disqualification in certain circumstances.

Questions of Membership of the National Assembly. The High Court will hear questions relating to membership of the National Assembly and there will be the right to go to the Court of Appeal where a question of law involving the interpretation of the Constitution arises in proceedings before the High Court as to membership of the National Assembly.

The Franchise. The Franchise will be based on universal suffrage for all persons aged twenty-one years who are citizens of Zambia and not otherwise disqualified.

Electoral Commission. An Electoral Commission of a chairman and two members appointed by the President, with the same qualifications as the chairman and members of the present Delimitation Commission, will prescribe constituency boundaries and review the division of Zambia into constituencies during each eight- to ten-year period. Such a review will be carried out whenever the number of parliamentary seats alters.

At Marlborough House. From left to right are Mr. John Roberts, leader of the National Progress Party; Dr. Kaunda; Mr. Duncan Sandys, Britain's Commonwealth Secretary; Mr. Harry Nkumbula, leader of the African National Congress; and Sir Evelyn Hone, Governor of Northern Rhodesia

Mr. Kapwepwe speaks to Dr. Kaunda as they wait for the Independence Conference to begin

The Commission will be responsible for the registration of voters and the conduct of elections. The number of constituencies will correspond with the number of seats in the National Assembly, but exclude nominated Members. There will be one Member for each constituency which should have the same total population as far as possible.

The Speaker and Deputy Speaker. The Speaker of the National Assembly will be elected by the Assembly either from the Members, or from persons outside the Assembly who are qualified for membership of the Assembly. He would vacate his office under certain circumstances of which the most important would be if he were removed from office by a resolution of the Assembly supported by not less than two-thirds of its Members. A Deputy Speaker should be elected by the Assembly from among its Members.

Ministers, Parliamentary Secretaries and any other officers who may be prescribed by Parliament will be ineligible for election to either office.

Legislative Power of Parliament. A Bill shall not become law until passed by the National Assembly and assented to by the President. The President shall be able to return Bills to the Assembly whereupon it shall not again be presented for assent within six months unless it has the support of two-thirds of all Members. If this occurs, the President shall either dissolve Parliament or give his assent within twenty-one days of presentation of the Bill.

Parliament shall have power to alter the Constitution provided that the proposed amendment has the support of two-thirds of all Members at the second and third readings of the Bill. Where any Bill relates to the Code of Human Rights, the Judiciary or the procedure for amending the Constitution, its proposals will also require approval by a simple majority of the total electorate at a referendum. There will be provision corresponding to Section 57 of the present Constitution of financial measures.

Summoning, Prorogation and Dissolution of Parliament. The summoning, prorogation and dissolution of Parliament will be on the lines of Section 61 of the existing Constitution. Not more than three months should elapse between a dissolution and the summoning of Parliament. The normal life of a Parliament shall be five years with power to vary this in special circumstances such as war or emergency.

House of Chiefs. Provision will be made for the composition, functions and procedure of a House of Chiefs substantially the same as those set out in Chapter V of the existing Constitution except that the powers formerly vested in the Governor will be transferred to the President.

The Judiciary. There will be a Court of Appeal for Zambia as in the existing Constitution. The President will be empowered to make an Order declaring that the Judicial Committee of the Privy Council shall be a Court of Appeal for Zambia. Section 85 of the existing Constitution relating to the High Court will remain substantially unaltered.

The Chief Justice will be appointed by the President and all other Judges by the President on the recommendation of the Judicial Service Commission. A Judge shall be removed by the President only on the report of a tribunal of three persons with judicial experience set up by the President.

The Judicial Service Commission, consisting of the Chief Justice as chairman, the chairman of the Public Service Commission, the Senior Justice of Appeal available and a member with judicial experience appointed by the President (but not a Member of the National Assembly), would, acting in the name of and on behalf of the President, make appointments of Registrar or Deputy Registrar of the Court of Appeal or High Court, all magistrates, the presidents and members of all subordinate courts and other judicial officers prescribed by the Legislature; and exercise disciplinary control over and remove from office persons holding or acting in such offices.

The Public Service Commission. This will consist of a chairman and three to six members appointed by the President. The President will be responsible for appointing members of the Public Service and for their disciplinary control and removal from office. In making appointments to the office of Permanent Secretary, Secretary to the Cabinet or Commissioner of Police and in exercising disciplinary control over persons holding or acting in such offices or removing such persons from office, the President would act after consultation with the Public Service Commission.

The Commission, acting in the name of and on behalf of the President, would make initial appointments of officers below the rank of Permanent Secretary or Commissioner of Police and effect appointments on promotion or transfer or exercise disciplinary control and remove from office persons below those ranks. In the exercise of these powers the Commission would be required to act in accordance with such general directions of policy as the President might see fit to give; and provided further that the President could require that any particular matter before the Commission should be referred to him for his consideration and decision.

The Armed Forces. The President as Commander-in-Chief of the Armed Forces will have power to use those forces as he considers necessary, to commission officers and dismiss or promote any member.

Dr. Kaunda is strapped into a helicopter for his flight to the Royal Military Academy, Sandhurst, where he met Northern Rhodesians who are training to be army officers

The Minister of Agriculture, Mr. Mudenda (with stick), and the Parliamentary Secretary to the Prime Minister, Mr. Milner (second from left), during a visit to Cambridge University where they met Northern Rhodesians studying there

The Prime Minister receives a cheque for £15,000 from Mrs. G. Lowenthal, chairman of the Nottingham Freedom from Hunger Committee. The cheque was part of £32,000 so far raised by Nottingham to help finance a training centre for Gwembe fishermen at Sinazongwe, on Lake Kariba

Dr. Kaunda chats with Mr. Nkumbula during a reception in London

Finance. The Government's power to authorise expenditure for unforeseen contingencies will be subject to such limitation as Parliament may decide. Powers to invest public money and make recoverable advances will be subject to similar limitations. If the question of removing the Auditor-General from office arose, the National Assembly would appoint a tribunal to report to them before deciding the issue.

Emergency Powers Order in Council. The Emergency Powers Order in Council will expire on the date of Independence.

Citizenship. The basic provisions relating to Zambia Citizenship will be as follows:

(a) Citizenship by operation of law. The following will automatically become citizens at Independence Day:

(i) every person born in Zambia who, immediately before Independence Day, is a British Protected Person;

(ii) every person born in Zambia on or after Independence Day, with the usual exceptions for a child of non-Zambian parents whose father possesses diplomatic immunity and for the child of an enemy alien father born in a place under occupation by an enemy;

(iii) every person born outside Zambia who immediately before Independence Day is a British Protected Person and whose father qualifies (or would but for his death have qualified) for citizenship of Zambia under (i) above;

(iv) every person born outside Zambia on or after Independence Day whose father at the date of his birth is a citizen of Zambia otherwise than under (iii) above.

(b) Citizenship by registration. The following will be entitled to become citizens by registration:

(i) any Commonwealth citizen or citizen of the Republic of Ireland or a citizen of an African country which grants its citizenship to citizens of Zambia by a comparable process of registration, if he has been ordinarily and lawfully resident in Zambia for not less than four years immediately preceding the application;

(ii) any person at least one of whose parents is a citizen of Zambia;

The Minister of Finance, Mr. Arthur Wina (left), and the Minister of Justice, Mr. Chona (second from right), at a reception in London given by the United Republic of Tanganyika and Zanzibar

(iii) any woman—

(a) who is the wife of a citizen of Zambia;

(b) who has been married to a man who became or would but for his death have become a citizen of Zambia under (a) above; or

(c) who immediately before Independence is or has been married to a man who became, or would but for his death have become, entitled to Zambia citizenship by registration but whose marriage has been terminated in any way before her husband became or was able to become a citizen of Zambia;

(iv) any person who immediately before Independence Day is a citizen of the United Kingdom and Colonies under the British Nationality Act, 1948, by virtue of his having been naturalised or registered in Zambia.

Dr. Kaunda at the Commonwealth Writers' Luncheon in London

The rights conferred by paragraphs (iii) (*c*) and (iv) above may be made subject to such time limits as may be prescribed by the Parliament of Northern Rhodesia/ Zambia.

(*c*) Commonwealth citizens. Zambia citizens, citizens of the United Kingdom and Colonies, British subjects without citizenship, and citizens of other countries within the Commonwealth having their own citizenship should be Commonwealth citizens.

(*d*) Reciprocal privileges. A citizen of any Commonwealth country, and a citizen of any foreign country which the Zambia Government may specify for this purpose, should, except as otherwise provided, have the same rights and privileges (being rights and privileges which, under the Zambia Constitution or any other law, are enjoyed by Zambia citizens) as a Zambia citizen has under the constitution or any other law of the country concerned. A certificate of the appropriate Ministry should be *prima facie* evidence for the purpose of this provision on the question of whether a Zambia citizen is entitled under the constitution or any other law of any other country to any other right or privilege. Other provisions relating to citizenship would be the subject of discussion in Northern Rhodesia and would be incorporated in local legislation.

Land. There are at present in force a number of Orders in Council dealing with Crown Land, Native Reserves and Native Trust Land in Northern Rhodesia, under which Crown Land is vested in the Crown and Native Reserves and Native Trust Land are vested in the Secretary of State and under which all these Lands are administered under prescribed systems of some complexity.

Since it would not be appropriate for the Crown or the Secretary of State to continue to hold land in Northern Rhodesia after Independence, the Conference agreed that the relevant Orders in Council should be amended shortly before Independence so that, from the date of Independence, the lands in question would vest in the President on behalf of the Republic and the functions of the Governor would be transferred to the President or to such other authority or authorities as the President might prescribe by order.

The amending orders would confirm the validity of any interests in or rights over land granted to or enjoyed by any person before Independence under the Orders in Council. The intention of these provisions would be to make it clear that the amending orders would not have any adverse effect on any rights or interests derived from the Orders in Council in existence at the time when the amending orders were made and that the persons entitled to those rights and interests would thereafter enjoy the same protection under the Code of Human Rights included in the Independence Constitution as other persons with rights and interests in land. The Orders in Council, as so amended, would continue in force after Independence as part of the law of the Republic and would be subject to amendment or repeal in the same way as Acts of Parliament of the Republic.

Barotseland Agreement

THE text of an agreement concerning the future of Barotseland within the Republic of Zambia was published in London on May 22, 1964, as a White Paper.

The agreement was signed on May 18 by the Secretary of State for Commonwealth Relations, Mr. Duncan Sandys, the Prime Minister of Northern Rhodesia, Dr. K. D. Kaunda, and the Litunga of Barotseland, Sir Mwanawina Lewanika III. It is called " The Barotseland Agreement, 1964 " and replaces all previous treaties between the Queen and the Litunga, and a provisional agreement concluded at Lusaka in April, 1964.

The agreement states that the provisions in the Constitution of Zambia relating to Human Rights, the Judiciary, and the Public Service shall have full force and effect in Barotseland.

The people of Barotseland shall have the same rights of access to the High Court of the Republic of Zambia as are accorded to citizens of the Republic, and a High Court judge will regularly go on circuit in Barotseland. The people of Barotseland shall also have the same right of appeal as citizens of the Republic.

The Litunga of Barotseland shall be recognised by the Government of the Republic of Zambia as the principal local authority in Barotseland.

The Litunga, acting after consultation with his Council, shall be authorised and empowered to make laws for Barotseland in relation to the following matters:

> The Litungaship, the Barotse Native Government (to be known as the Barotse Government), the Barotse Native Authorities, the Barotse Native Courts, the status of the members of the Litunga's Native Council, local government matters, land, forests, traditional and customary matters, fishing, control of hunting, game preservation, control of bush fires, the Barotse Native Treasury, the supply of beer, reservation of trees for canoes, local taxation, and local festivals.

The Litunga and his Council shall continue to have the powers hitherto enjoyed by them in respect to land matters under customary law and practice.

The courts at present known as the Barotse Native Courts shall have original jurisdiction (to the exclusion of any other court in the

Republic of Zambia) in respect of matters concerning rights over or interests in land in Barotseland to the extent that those matters are governed by the customary law of Barotseland: provided that nothing in this paragraph shall be construed as limiting the jurisdiction and powers of the High Court of the Republic of Zambia in relation to prerogative writs or orders.

Save with leave of the court at present known as the Saa-Sikalo Kuta, no appeal shall lie from any decision of the Barotse Native Courts to the High Court of the Republic of Zambia.

The Government of the Republic of Zambia shall have the same general responsibility for providing financial support for the administration and economic development of Barotseland as it has for other parts of the Republic.

Any question concerning the interpretation of this agreement may be referred by the Government of the Republic of Zambia to the High Court of the Republic for consideration (in which case the opinion of the Court shall be communicated to that Government and to the Litunga of Barotseland and his Council) and any such question shall be so referred if the Litunga, acting after consultation with his Council, so requests.